

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

HAROLD KELLY MURPHY,

Plaintiff,

vs.

SOUTHERN ENERGY HOMES, INC., et al.,

Defendants.

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* **CASE NO.: 2:06-cv-618-MEF**

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PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT

COMES NOW Plaintiff, pursuant to Fed. R. Civ. P. 15(a) and for the reason set forth below, hereby submits this Motion for Leave to Amend his Complaint. The purpose of such amendment would be to clarify the factual grounds of Plaintiff's Complaint to demonstrate the inapplicability of Defendant's affirmative defense of federal preemption. In support thereof, Plaintiff states as follows:

1. On or about June 14, 2006, Plaintiff instituted this action in the Circuit Court of Montgomery County, Alabama against Defendant Southern Energy Homes, Inc. On July 14, 2006, Defendant removed this matter to this Court.

2. On August 22, 2007, the Court entered a Uniform Scheduling Order setting this case for trial during the term of Court commencing on September 17, 2007. Additionally, the order stated motions to amend the pleadings and to add parties shall be filed on or before November 6, 2006.

3. On November 7, 2006, Defendant filed an Amended Answer in order to assert additional affirmative defenses, federal preemption. On December 19, 2006,

Defendant filed a Second Amended Answer in order to assert one additional affirmative defense.

4. On May 4, 2007, the Court entered an Amended Scheduling Order stating that the time for filing any motion to amend the pleadings and to add parties has expired. Additionally, the Court continued the trial of this case to the term of Court commencing on February 4, 2008 and the discovery cutoff date to December 21, 2007.

5. On May 9, 2007, Defendant filed a Motion for Judgment on the Pleadings and based its arguments solely on federal preemption. Defendant relied heavily on the ruling on Guidroz v. Champion Enterprises, Inc., et al., Civil Action No. 05-1148 L-0 (Federal Court La.). This ruling was entered on January 26, 2007.

6. Under rule 15 of the Federal Rules of Civil Procedure, "leave shall be freely given when justice so requires."

7. In the case at bar, Plaintiff should be allowed to amend his Complaint to clarify the factual grounds of his claim and to demonstrate the inapplicability of Defendant's affirmative defense of federal preemption.

8. The factual grounds of Plaintiff's Complaint have fully been explained in Plaintiff's response to Defendant's Interrogatories. In light of the rulings in Guidroz, Plaintiff desires to more specifically plead his Complaint in order to show that his claims are in line with the facts and the law. The time to amend had expired when the Guidroz Court granted Defendant's Motion to Dismiss on January 26, 2007 and later entered an order allowing Plaintiffs to amend their Complaint on May 17, 2007. In light of the decisions in Guidroz, Rule 15 mandates leave to allow Plaintiff to amend his Complaint. A proposed amended Complaint is attached hereto as "Exhibit 1."

9. At this time, the Parties have merely exchanged initial disclosures and other paper discovery, and no depositions have been taken. Defendant will not be prejudiced by leave to amend the original Complaint.

Wherefore, Plaintiff respectfully requests that this Court grant the instant motion and allow him to amend his Complaint.

/s/ C. Lance Gould
C. LANCE GOULD (ASB-0913-G66C)
Attorney for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed the original of the foregoing document in this Court and served a copy upon all Defendants of record as listed below by placing a copy of same in the United States Mail, first class, postage prepaid on this the 25th day of May, 2007.

/s/ C. Lance Gould
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